

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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Mosher
PL II

FILE: B-196689

Reimbursement of

DATE: December 13, 1979

MATTER OF: Wayne E. Webb - Real estate expenses *Involving*
Loan origination fee

DIGEST: Federal employee upon transfer paid 1 percent of the amount of a loan on purchase of residence as a loan origination fee. Reimbursement of loan origination fee is not authorized under Federal Travel Regulations, para. 2-6.2d (May 1973), since such fee is a "finance charge" within the definition of that term in section 106(a) of the Truth in Lending Act.

The issue presented in this appeal from a settlement of our Claims Division is whether a loan origination fee paid by an employee to secure a mortgage for purchase of a residence upon transfer may be reimbursed as a real estate expense under 5 U.S.C. 5724a (1976). The answer is no.

Mr. Wayne E. Webb, an employee of the Geological Survey, Department of the Interior, paid a loan origination fee on the purchase of a residence in Reston, Virginia. The purchase of the residence was in connection with an official transfer of station. The loan origination fee of \$495 represented 1 percent of the principal amount of his \$49,500 mortgage loan.

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Mr. Webb argues that the loan initiation fee was an expense he incurred which was required in order for him to get a loan to purchase a house and, therefore, it should be reimbursable. He points out that a mortgage prepayment penalty incurred in selling a house at the old residence is reimbursable. He indicates that the origination fee and prepayment penalty are both income to a mortgage company and he believes both should be treated the same.

Authority to reimburse a Government employee to the extent considered "necessary and appropriate" for "all or a part of" the expenses incurred in connection with the purchase of a residence upon official transfer of station is found in section 5724a of title 5 of the United States Code (1976). Power to prescribe regulations implementing the above statute is given to the President. The President delegated his function under the statute to the Administrator of the General Services Administration (GSA) by Executive Order No. 11609, July 22, 1971. The

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governing regulations promulgated by the GSA are contained in chapter 2, part 6 of the Federal Travel Regulations (FPMR 101-7), May 1973.

Federal Travel Regulations (FPMR 101-7) para. 2-6.2d (May 1973), in defining which miscellaneous expenses are reimbursable in connection with the purchase and sale of residences provides in pertinent part that:

"* * * A charge made for prepayment of a mortgage * * * in connection with the sale of a residence at the old official station is reimbursable.* * * no fee, cost, charge, or expense is reimbursable which is determined to be a part of the finance charge under the Truth in Lending Act, Title I, Public Law 90-321, and Regulation Z issued pursuant thereto by the Board of Governors of the Federal Reserve System. * * *"

Section 106 of the Truth in Lending Act, Title I, Pub. L. 90-321, 82 Stat. 146, 148-149, provides the following guidelines for determining whether a particular charge is an excludable expense or a part of the finance charge:

"(a) Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit, including any of the following types of charges which are applicable:

"(1) Interest, time price differential, and any amount payable under a point, discount, or other system of additional charges.

"(2) Service or carrying charge.

"(3) Loan fee, finder's fee, or similar charge.

"(4) Fee for an investigation or credit report.

"(5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss.

* * * * *

"(e) The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

"(1) Fees or premiums for title examination, title insurance, or similar purposes.

"(2) Fees for preparation of a deed, settlement statement, or other documents.

"(3) Escrows for future payments of taxes and insurance.

"(4) Fees for notarizing deeds and other documents.

"(5) Appraisal fees.

"(6) Credit reports."

Regulation Z (12 C.F.R., Part 226), was promulgated by the Board of Governors of the Federal Reserve System pursuant to the Truth in Lending Act, and sets forth the foregoing in substantially the same form.

The loan origination fee claimed by Mr. Webb related to the processing and handling of his loan. Such a fee which varies in total amount in direct proportion to the amount borrowed is more in the nature of a charge for the hire of money than reimbursement for administrative costs of processing the loan. As such, this fee may be described as a "loan fee" within the meaning of section 106(a)(3) of the Truth in Lending Act. See decisions B-168674, March 11, 1974; B-177306, January 2, 1973. No exception for loan

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2 origination fees is contained in section 106(e) of the Act. Thus, since the loan origination fee is a "finance charge" according to section 106 of the Truth in Lending Act, and since the Federal Travel Regulations preclude reimbursement for such "finance charges," reimbursement is not allowed for the loan origination fee paid by Mr. Webb. B-186734, September 23, 1976; B-185621, April 27, 1976; and B-183972, April 16, 1976. A mortgage prepayment penalty, however, is not considered a finance charge under the regulations and is specifically authorized to be reimbursed. As is indicated above, the regulations prescribing the authorized reimbursements, and exclusions, are issued by GSA, and we have no authority to change them.

Accordingly, the disallowance of Mr. Webb's claim is sustained.



For The Comptroller General
of the United States